

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE**

In re EBC I, INC., f/k/a ETOYS, INC.,

Reorganized Debtor.

Chapter 11
Case No. 01-0706 (MFW)

EBC I, INC., f/k/a ETOYS, INC.,

Plaintiff,

v.

AMERICA ONLINE, INC.,

Defendant.

Adv. Proc. No. 03-50003 (MFW)

APPELLEE'S COUNTER-DESIGNATIONS

On January 22, 2008, EBC I, Inc. (f/k/a eToys, Inc.) filed a Notice of Appeal from the January 10, 2008 Order resolving the above-captioned adversary proceeding. *See* Order at Dk. No. 113, Notice of Appeal at Dk. No. 115.¹ On February 1, 2008, EBC I, Inc., as Appellant, filed its Statement of Issues and Designation of Items To Be Included In Record On Appeal. *See* Dk. No. 117.

AOL LLC (f/k/a America Online, Inc.), as Appellee, hereby counter-designates the following items, in response to the designations of the Appellant EBC I, Inc:

PLEADINGS AND DOCKET ENTRIES

(From The Above-Captioned Adversary Proceeding)

Tab No.	Docket No.	Item Description
1	2	Summons and Notice of Pretrial (Entered: 01/03/2003)
2	3	Defendant America Online, Inc.'s Motion to Dismiss the Complaint (Entered: 02/13/2003)
3	4	Brief in Support of Defendant America Online, Inc.'s Motion to Dismiss

¹ The January 10, 2008 Order that is the subject of this Appeal was accompanied by the Court's Findings of Fact and Conclusions of Law [Dk. No. 111] and related Opinion [Dk. No. 112].

		Complaint (Entered: 02/13/2003)
4	5	Motion and Order for Admission Pro Hac Vice of James R. Wrathall (Entered: 02/20/2003)
5	6	Motion and Order for Admission Pro Hac Vice of Carol J. Banta (Entered: 02/20/2003)
6	7	Order Approving Stipulated Briefing Schedule Related To Defendant America Online, Inc.'s Motion To Dismiss The Complaint Signed in Court on 2/21/2003 (Entered: 02/24/2003)
7	8	Plaintiff's Answering Brief In Opposition To AOL's Motion To Dismiss (Entered: 03/11/2003)
8	9	Notice of Service (Entered: 03/11/2003)
9	10	Reply Brief in Support of Defendant's Motion to Dismiss the Complaint (Entered: 03/19/2003)
10	11	Notice of Completion of Briefing and Grant of Request For Oral Argument (Entered: 03/21/2003)
11	12	Stipulated Scheduling Order (A) Establishing Dates For Conducting And Completing Discovery And For Filing And Responding To Dispositive Motions And (B) Authorizing Additional Extensions Upon Agreement Of The Parties Without Further Order Of The Court Signed on 3/24/2003 (Entered: 03/25/2003)
12	13	Notice of Service of Plaintiff's Initial Disclosures Under Rule 26(a) (Entered: 05/01/2003)
13	14	Notice of Service of Defendant America Online, Inc.'s Initial Disclosures Pursuant to Fed. R. Civ. P. Rule 26(a)(1) (Entered: 05/02/2003)
14	15	Certification of Counsel (Entered: 05/02/2003)
15	16	Answer of Defendant America Online, Inc. (Entered: 05/19/2003)
16	17	Notice of Service of Plaintiff's First Set of Requests for the Production of Documents and Plaintiff's First Set of Interrogatories to Defendant (Entered: 05/22/2003)
17	18	Notice of Service of (i) Responses and Objections of Defendant America Online, Inc. to Plaintiff's First Set of Interrogatories to Defendant, and (ii) Responses and Objections of Defendant America Online, Inc. to Plaintiff's First Set of Requests for the Production of Documents (Entered: 07/02/2003)
18	19	Certification of Counsel (Entered: 07/11/2003)
19	20	Notice of Service of Defendant America Online, Inc.'s First Set of Requests for Production of Documents (Entered: 07/16/2003)
20	21	Notice of Service of Defendant America Online, Inc.'s First Set of Interrogatories to Plaintiff (Entered: 07/21/2003)
21	22	Notice of Service re Plaintiff's Responses to Defendant's First Request for Production of Documents and Plaintiff EBC I, f/k/a eToys, Inc.'s Objections and Responses to Defendant's First Set of Interrogatories (Entered: 08/22/2003)
22	23	Notice of Service re Plaintiff's Response to Defendant America Online, Inc.'s First Set of Requests for Admission and Supplemental Response to Interrogatory No. 13 of Defendant's First Set of Interrogatories (Entered: 08/22/2003)

		09/10/2003)
23	25	Certification of Counsel (Entered: 10/15/2003)
24	26	Scheduling Order (Revised Stipulated) (A) Establishing Dates for Conducting and Completing Discovery and for Filing and Responding to Dispositive Motions and (B) Authorizing Additional Extensions Upon Agreement of the Parties without Further Order of the Court -Order Signed on 10/21/2003 (Entered: 10/23/2003)
25	27	Certification of Counsel (Entered: 10/29/2003)
26	28	Motion and Order for Admission Pro Hac Vice of Gregory Chernack (Entered: 11/07/2003)
27	30	Order Granting Motion for Admission Pro Hac Vice of Gregory Chernack, Esquire (Entered: 11/13/2003)
28	29	Notice of Depositions (Entered: 11/11/2003)
29	31	Notice of Deposition of Steven Schoch and Subpoena Duces Tecum (Entered: 12/03/2003)
30	32	Notice of Deposition of Edward Lenk and Subpoena Duces Tecum (Entered: 12/03/2003)
31	33	Notice of Deposition of Peter Brine and Subpoena Duces Tecum (Entered: 12/03/2003)
32	34	Notice of Deposition Notice of Deposition and Subpoena Duces Tecum (Entered: 12/12/2003)
33	35	Notice of Service of Defendant America Online, Inc.'s Second Set of Requests for Admission (Entered: 12/17/2003)
34	36	Notice of Deposition of Chris Iannucelli (Entered: 01/05/2004)
35	37	Notice of Deposition of Mirza Baig (Entered: 01/05/2004)
36	38	Notice of Service of Plaintiff's Responses to Defendant America Online, Inc.'s Second Set of Requests for Admissions and Supplemental Repsonse to Interrogatory No. 13 of Defendant's First Set of Interrogatories (Entered: 01/26/2004)
37	39	Certification of Counsel (Entered: 02/03/2004)
38	40	Notice of Service re Plaintiff's First Set of Requests for Admission Directed to Defendant and Plaintiff's Second Set of Interrogatories Directed to Defendant (Entered: 02/04/2004)
39	41	Notice of Change of Firm Name (Entered: 02/06/2004)
40	42	Notice of Service re Plaintiff's Responses To Defendant America Online, Inc.'s Second Set Of Requests For Admissions (Entered: 03/12/2004)
41	43	Notice of Service re: Responses and Objections of Defendant America Online, Inc. to Plaintiff's First Set of Requests for Admission Directed to Defendant and the Responses and Objections of Defendant American Online, Inc. to Plaintiff's Second Set of Interrogatories Directed to Defendant (Entered: 03/19/2004)
42	44	Scheduling Order (REVISED STIPULATED) (A) Establishing Dates For Conducting and Completing Discovery and For Filing and Responding To Dispositive Motions and (B) Authorizing Additional Extensions Upon Agreement of the Parties Without Further Order of the Court. (Entered: 03/26/2004)

43	45	Notice of Deposition (EBC 1 v. America Online, Inc (Entered: 04/26/2004)
44	52	Notice of Document Entered in Error, Filed by America Online, Inc.. (Entered: 05/18/2004)
45	58	Order Reassigning Case to the Honorable Paul B. Lindsey. Order Signed on 5/25/2004. (LCN,) (Entered: 05/26/2004)
46	62	Notice of Change of Firm Name to Wilmer Cutler Pickering Hale and Dorr LLP (Entered: 06/03/2004)
47	67	Notice and Order of Request for Status Report with Certificate of Service (Entered: 06/18/2004)
48	68	Order Reassigning Adversary Proceeding to the Honorable Mary F. Walrath. Order Signed on 6/21/2004. (LCN,) (Entered: 06/21/2004)
49	69	Certificate of Service (Entered: 06/21/2004)
50	70	Status Report F - Expected Date of Discovery/Disclosure (Entered: 07/02/2004)
51	79	Motion to Appear pro hac vice of Amanda L. Major, Esquire. (Entered: 12/19/2006)
52	81	Order Granting Motion for Admission pro hac vice of Amanda L. Major. Order Signed on 12/20/2006. (BJM) (Entered: 12/22/2006)
53	90	Copy of Transmittal of Motion for Leave to Appeal and Notice of Appeal, originally sent 1/23/07 (Entered: 04/27/2007)
54	92	Notice of Service of Supplemental Expert Report of Robert A. Hutchins (Entered: 05/31/2007)
55	93	Notice of Agenda of Matters Scheduled for 6/5/2007 at 10:30 AM at US Bankruptcy Court, 824 Market St., 5th Fl., Courtroom #4, Wilmington, Delaware. (Entered: 06/01/2007)
56	94	Minutes of Hearing held on: 06/05/2007 Subject: Pretrial Conference. Additional attachment(s) added on 6/5/2007 (LCN,). (Entered: 06/05/2007)
57	95	Motion to Appear pro hac vice of Michael (Entered: 06/19/2007)
58	97	Order Granting Motion To Appear pro hac vice of Michael Snyder Order Signed on 6/20/2007. (MJY,) (Entered: 06/22/2007)
59	99	Minutes of Hearing held on: 06/26/2007 Subject: Two-day trial. Additional attachment(s) added on 6/27/2007 (MJY,). (Entered: 06/27/2007)
60	109	Order Granting Motion for Leave to File Reply. Order Signed on 8/14/2007. (MJY,) (Entered: 08/15/2007)
61	110	Affidavit/Declaration of Service of Maria E. Whalen Regarding the Oder Granting Motion for Leave to File Supplemental Appendix to Post-Trial Brief of Defendant AOL (Entered: 08/16/2007)
62	117	Statement of Issues on Appeal and Designation of Items to be Included in Record, Filed by EBC I, Inc., f/k/a eToys, Inc.. (Entered: 02/01/2008)

DEPOSITION DESIGNATIONS**Deposition of Peter Brine
taken on December 19, 2003**

FROM		TO	
PAGE	LINE	PAGE	LINE
56	3	57	19
61	7	61	16
61	17	61	21
62	4	62	8
62	24	63	17
73	21	74	18
86	14	86	16
86	20	87	5
114	2	114	18

**Deposition of Toby Lenk
taken on December 18, 2003**

FROM		TO	
PAGE	LINE	PAGE	LINE
106	23	106	24
149	21	149	23

Appellee's Trial Exhibits

Defendant's Exhibit Number	Date	Description
1	11/18/97	PR Newswire: "eToys Announces Multi-Million Dollar Deal with America Online- Online Toy Retailer Strengthens Leading Position Through Advertising and Marketing Agreement with Top Internet Online Service"
2	10/01/97	Interactive Marketing Agreement
3	01/01/98	Addendum to Interactive Marketing Agreement
4	02/09/99	E-mail To: Peter and Phil; From: M Telesco; re: 1/22 MTG Follow up
5	05/12/99	E-mail To: AW Horrigan, KM Osio; From: Pegfry; re: FWD: AOL e-toys Proposal
6	05/13/99	E-mail To: AW Horrigan; From: Peter Brine; re: E-toys Rates
7	07/01/99	E-mail To: Sue Burger; From: M Telesco; re: FWD: Dreamcast Release
8	07/09/99	E-mail To: D Staley, Sue Burger; From: YangBNess; re: FWD: eToys
9	07/12/99	E-mail To: M Telesco, YangBNess, DavisNeil, AW Horrigan; From: M Telesco; re: eToys Shopping Placements
10	07/27/99	E-mail To: Sue Burger; From: Peter Brine; re: Follow up
11	07/29/99	E-mail To: Mary Telesco, Sue Burger; CC: Phil Polishook; From: Peter Brine; re: FW: Revised AOL Shopping Placements
12	07/30/99	E-mail To: Sue Burger; From D Staley; re: FWD: eToys Release
13	08/03/99	E-mail To: Sue Burger; From: RL Karp; re: FWD: eToys
14	08/11/99	eToys Deal Summary
15	08/11/99	"eToys Signs \$18 Million Marketing Agreement with America Online: 3-Year Deal Names eToys as Premier Retailer of Children's Products Across AOL Family of

		Brands”
16	08/24/99	Kick-Off Meeting Agenda
17	08/23/99	E-mail To: Greengg, RL Karp, Patrick Gates, KRodrig1, Kevin, JenLUllyot; Sue Burger, M Telesco; From: CVALLESF; re: eToys Presentation Timing
18	08/24/99	Partnership Kick Off Meeting; August 24, 1999
19	08/25/99	E-mail To: M Telesco, CVALLESF, RL Karp, Patrick Gates, K Rodrig, Greengg, Raghu, JenLUllyot, Kevin, JasonR; From: Sue Burger; re: eToys Kickoff
20	1999	Holiday Promotion Preview for eToys
21	10/07/99	E-mail To: Sue Burger; From: Now Playing at eToys; re: Reading with Rosie O'Donnell and More!
22		AOL Toy Decision Guide Mock-Up
23		Presentation on Kids Only Holiday Wish List
24	10/08/99	E-mail To: Sue Burger; From: M Telesco; re: Current eToys Issues
25	10/08/99	E-mail To: Greengg; CC: KRodrig1; Sue Burger; From: M Telesco; re: IMP: eToys WS Change
26	10/25/99	E-mail To: Sue Burger; From: MMINIGAN; re: FWD: eToys Call Summary
27	11/10/99	Review of the Leading Kids E-tailer Quarterly Results
28	02/18/00	E-mail To: Mirza Baig; From: Sue Burger; re: eToys
29	02/22/00	E-mail To: Sue Burger, Iannuccilli, MMINIGAN, CVALLESF; From: M Telesco; re: FWD: eToys Named Top Overall Web Site of '99 Holiday Season
30	03/15/00	E-mail To: KDWakeford, Mirza Baig; From: Sue Burger; re: eToys-International and BabyCenter
31	08/10/99	Terms of the Amended Carriage Plan
32		Letter To: Katherine, Diane, Sue; From: Janine Bousquette; re: eToys and AOL Partnership

33	04/05/00	eToys- Draft Term Sheet
34	04/27/00	E-mail To: KatherineB, DStaley, GregRigdon; From Sue Burger; re: eToys Update
35	05/15/00	Account Services Partner Restructuring Form
36	05/30/00	E-mail To: dstaley, katherineb; re: eToys Call
37	June 2000	Presentation on Shop@ 2001
38	06/02/00	E-mail To: MBERlow, ELKeller; From: Sue Burger; E-mail: eToys call
39		Talking Points for Pending Call with eToys
40	06/27/00	E-mail To: Sue Burger, Iannaculli; From: M Telesco; re: eToys CY1 Shortfall
41		eToys Overview
42	08/24/00	E-mail To: DStaley, KatherineB, Patrickgates; From: Sue Burger; re: eToys Meeting
43	09/06/00	Chart of Forecasted Delta Year 2 and 3 of Term – AOL Version
44	09/06/00	09/06/00 Chart of Forecasted Delta Year 2 and 3 of Term – eToys Version
45	09/13/00	Memo To: Sue Burger; From: Janine Bousquette; re: Interactive Marketing Agreement
46	09/25/00	E-mail To: Sue Burger; From: Tymoynihn; re: FWD: eToys- Restructuring Sign-offs for WS placements –Time Sensitive
47	09/26/00	Fax To: Janine Bousquette; From: Sue Burger (PX 40, Depo. of Sue Burger)
48	09/28/00	Fax To: Sue Burger; From: Peter Brine
49	10/05/00	E-mail To: Sue Burger; From: Iannaculli; re eToys Proposal
50	10/11/00	E-mail To: Sue Burger, Chris Iannaculli, Chris Valle, Dinah Rigdon, Mirza Baig; From: Peter Brine; re: eToys Carriage Plan
51	10/17/00	E-mail To: SchaenJen; From: Iannaculli; re: eToys

52	10/20/00	Letter To: Sue Burger; From: Janine Bousquette; re: Toys Inc. Interactive Marketing Agreement
53	10/25/00	E-mail To: Chris Iannaculli, Mirza Baig, Sam Lam, Chris Valle; From Peter Brine; re: AOL BabyCenter Content Agreement
54	07/17/03	eToys 1999 Impression Performance Report
55	11/09/00	Mary Kate and Ashley Mystery Mail
56	08/25/2003	eToys Addendum Summary
57	12/15/00	"eToys Expects Lower Than Esitimated Fiscal Third Quarter Operating Results"
58	02/05/01	"eToys Announces Additional Cost Reduction Efforts, Extension of Standstill Agreement, Notice of Possible Delisting Within 90 Days"
59	02/26/01	Press Releases: "eToys Announces Plans for Bankruptcy Filing", Business Wire; "eToys to File for Bankruptcy, Shut Down Site," Newsbytes
60	02/26/01	eToys Minutes of the Board of Directors Meeting
61	03/02/01	"eToys' Dramatic Fall to Bankruptcy," Compuserve News
62		E-toys Search
63		Level 1 Summary of November 2000
64		Performance Summary of December 2000
65		eToys Overview
70	11/15/99	09/30/99 eToys, Inc. Form 10-Q
71	02/14/00	12/31/99 eToys, Inc. Form 10-Q
72	02/07/00	eToys, Inc. Form S-1
73	06/02/00	03/31/00 eToys, Inc. Form 10-K
74	06/02/00	06/02/00 eToys, Inc. Form 8-K
75	08/14/00	06/30/00 eToys, Inc. Form 10-Q

76	11/14/00	09/30/00 eToys, Inc. Form 10-Q
77	12/18/00	12/15/00 eToys, Inc. Form 8-K
78	02/14/01	12/31/00 eToys, Inc. Form 10-Q
79	01/05/01	01/04/01 eToys, Inc. Form 8-K
80		Table: eToys, Inc. Share Price Trading and Volume, August 1999
81		Table: eToys, Inc. Daily Stock Price, Nov. 15, 2000-Feb 28, 2001
82		eToys, Inc. Annual Report for March 31, 2000
83		Illustrative Slides Re: Hutchin's Expert Testimony
84		Index of Documents Hutchins Relied Upon For Expert Testimony

February 11, 2008



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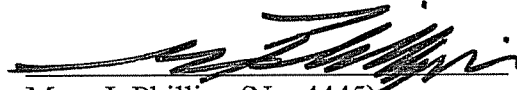
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#591510v1

CERTIFICATE OF SERVICE

I, Marc J. Phillips, hereby certify that on the 11th day of February, 2008, I caused a true and correct copy of the foregoing **Appellee's Counter-Designation** to be served upon the person or entity indicated below in the manner indicated below.


Marc J. Phillips (No. 4445)

VIA HAND DELIVERY

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